

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
NAN & Company, dba
NAN PARTNERS, Inc.,
and TOM ROWE,

Appellants,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 81-117

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, an appeal of three \$250 civil penalties for outdoor burning allegedly in violation of respondent's Article 8 of Regulation I, came on for hearing before the Pollution Control Hearings Board, Gayle Rothrock, Vice Chairman, and David Akana, Member, convened at Lacey, Washington on December 7, 1981. William A. Harrison, Administrative Law Judge, presided. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellants appeared by shareholder, Craig Shepard. Respondent

1 appeared by its attorney, Keith D. McGoffin. Reporter Lois Fairfield
2 recorded the proceedings.

3 Witnesses were sworn and testified. Exhibits were examined. From
4 testimony heard and exhibits examined, the Pollution Control Hearings
5 Board makes these

6 FINDINGS OF FACT

7 I

8 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
9 a certified copy of its Regulation I containing respondent's
10 regulations and amendments thereto, of which official notice is taken.

11 II

12 On June 16, 1981, the Kent Fire Department received a report of
13 fires burning upon appellants' construction site. The Fire Department
14 responded by sending a fire engine. At the site, where appellants are
15 constructing a residential development (subdivision) of homes, the
16 fire department discovered three outdoor fires. Each was near the
17 street and averaged three to four feet in diameter and about two feet
18 in height. The fires contained roofing material, black paper,
19 plastics and wood ends. This material was construction debris from
20 the site.

21 III

22 The Fire Department officer informed the appellants' foreman of
23 the fires and requested that each be extinguished. The fires were
24 extinguished by an employee of appellants.

25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

IV

Respondent's inspector, called by the Fire Department, observed the fires finding the materials as stated above. Appellants had no outdoor fire permit from the air pollution control agency or the Fire Department. Fire department permits are limited to the burning of natural vegetation and provide no authority for burning the construction debris burned here.

V

Respondent's inspector issued notices of violation and appellants later received three notices of civil penalty, one for each fire concerned. Each notice imposed a civil penalty of \$250 for violation of Section 8.02(3), prohibiting the burning of certain materials and for Sections 8.02(5) and 8.05(1) respectively, requiring permits from the local fire authority or from respondent itself. Penalties thus total \$750. From this, appellants appeal.

VI

Appellant NAN Partners, Inc., is an experienced home developer building up to 500 homes per year in the Seattle area. It is company policy to haul construction debris from the site rather than to burn it. Appellant understands fully the prohibition against burning construction debris which applies under respondent's regulations and also understands the necessity of a fire department permit for the fires (usually landclearing of natural vegetation) which are allowed.

Nevertheless, appellant has been cited and penalized on three prior occasions for outdoor burning of construction debris on a job site.

1 The fire in question was not started with the permission of
2 appellants' foreman. Despite his capacity as foreman, he did not know
3 of the fires until informed by the Fire Department officer at the
4 scene.

5 VII

6 Any Conclusion of Law which should be deemed a Finding of Fact is
7 hereby adopted as such.

8 From these Findings the Board enters these

9 CONCLUSIONS OF LAW

10 I

11 The fires contained prohibited materials and were burned without
12 the written permission of the Fire Department to that extent.
13 Likewise the fires were burned without the required written permission
14 of respondent. The fires were each in violation of Sections 8.02(3),
15 8.05(1) and 8.02(5) of respondent's Regulation I.

16 II

17 The fires were ignited on appellants' construction site by workmen
18 seeking to dispose of construction debris. Appellant is responsible
19 for allowing these fires.

20 III

21 Appellants' expressed intent to haul construction debris has been
22 made good in the vast majority of instances. These small fires, like
23 the fires involved in prior violations, are aberrations. Appellants'
24 foreman is instructed and otherwise motivated to keep debris fires
25 from occurring on the construction site. Because of appellants' attempt

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

1 to comply with respondent's outdoor fire rules over time and the
2 prompt extinguishment of these fires when requested, the penalty
3 should be mitigated by partial suspension.

4 IV

5 Any Finding of Fact which should be deemed a Conclusion of Law is
6 hereby adopted as such.

7 From these Conclusions the Board enters this

8 ORDER

9 The three \$250 civil penalties totalling \$750 are each hereby
10 affirmed, however, \$375 of these is suspended on condition that
11 appellant not violate respondent's outdoor burning regulations for a
12 period of six months from appellants' receipt of this Order. The
13 remaining \$375 is affirmed due and payable.

14 DONE at Lacey, Washington this 11th day of December, 1981.

15 POLLUTION CONTROL HEARINGS BOARD

16 
17 GAYLE ROTHROCK, Vice Chairman

18 
19 DAVID AKANA, Member

20 
21 WILLIAM A. HARRISON
22 Administrative Law Judge
23

24
25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER